

REMARKS

Interview Summary

Applicant's attorney acknowledges an interview on June 7, 2005 during which *Alfano* was discussed. No agreement was reached.

The Examiner did clarify that the "housing" of *Alfano* was a tube that enclosed the bundle of fibers, best seen in FIG. 9 of *Alfano*, and that each such fiber was a "port" because it provided a conduit through which light could pass.

The Examiner also indicated that he had interpreted "eccentric" to include *all* definitions of the term as given in the dictionary citation in the office action. According to the Examiner, FIG. 9 of *Alfano* depicted a port that met the first definition, namely a port "deviating from an established or usual pattern of style."

Applicant proposed amending the claims to recite "off-center." The Examiner indicated that in his view, this term would provide more of a structural limitation than "eccentric." However, the Examiner also indicated that further consideration would be required.

Interpretation of "eccentric"

The Examiner has indicated that he considers "eccentric" to include all definitions of the term as given in the dictionary citation in the office action. One such definition is that of "deviating from an established or usual pattern of style."

As best understood from the telephone interview on June 7, 2005, the Examiner considers FIG. 9 of *Alfano* to show an arrangement of ports that is eccentric because it somehow deviates "from an established or usual pattern or style."

The Examiner has not, however, indicated what this "established or usual pattern or style" looks like. Without having done so, it is meaningless to assert that the arrangement shown in FIG. 9 deviates from it. Thus, even if one were to accept the proposed interpretation of "eccentric," *Alfano* would still fail to disclose the claimed subject matter.

Applicant recognizes that a claim term is to be given its broadest reasonable interpretation.¹ However, the proposed interpretation of “eccentric” as meaning “deviant from normal,” as the word is used in phrases such as “an eccentric uncle,” is plainly unreasonable.

During examination, claim terms are to be given their broadest reasonable interpretation consistent with the specification.² It is, after all, the specification that reflects what the ordinary meaning of a word would be to those of ordinary skill in the art.³ Nowhere does the specification suggest that “eccentric” means deviating from some norm. In fact, the specification consistently uses “eccentric” to mean “off-center.”

Moreover, the broadest reasonable interpretation must also be consistent with the interpretation that those skilled in the art would reach.⁴ Applicant submits that, in the context of a spinning catheter, one of ordinary skill would no doubt interpret “eccentric” as referring to something radially displaced from an axis of rotation. It is unlikely that one of ordinary skill who is reading a description of a rotating catheter would think of “eccentric” as meaning anything but off-center.

To determine the meaning of a word, the Examiner may consult extrinsic sources, such as dictionaries. However, where more than one meaning is given, the Examiner is expected to examine the intrinsic record to see which meaning is most consistent with Applicant's use of the term.⁵ It appears that the Examiner has not done so. Applicant submits that nowhere does the specification suggest any basis for interpreting “eccentric” to mean anything but “off-center”

Section 102 rejection

As best understood, the Examiner considers there to be a tubular jacket surrounding the fibers in FIG. 9 of *Alfano*. This jacket would thus correspond to the “housing” recited in claim 1.

¹ MPEP 2111.01.

² MPEP 2111 citing *In re Hyatt*, 211 F. 3d 1367 (Fed. Cir. 2000).

³ MPEP 2111.01(II), citing *Ferguson Beauregard/Logic Controls v. Mega Systems*, 350 F.3d 1327, 1338 (Fed. Cir. 2003).

⁴ MPEP 2111 citing *In re Cortright*, 165 F.3d 1353, 1359 (Fed. Cir. 1999).

⁵ MPEP 211.01(II) citing *Renishaw PLC v. Marposs Societa per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998) (“Where there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meanings”).

It is apparent from FIG. 9 of *Alfano* that this "housing" is a tube having an opening at each end. These openings are centered. Therefore, to the extent the tube forms a "housing" it continues to lack the required "eccentric port."

In addition, claim 1 recites "a lens disposed *inside* the housing." The housing in *Alfano* is allegedly the tube enclosing the fibers. There is clearly no lens inside this tube.

Since there is no lens *inside* the housing, there can be no "beam disposed *between* the lens and the distal face [of the housing]" as required by claim 1.

Alfano clearly fails to teach or suggest each claim limitation. Hence, the Section 102 rejection is improper.

Summary

Now pending in this application are claims 1-16, of which claims 1 and 10 are independent. No additional fees are believed to be due in connection with this request for reconsideration. However, to the extent fees are due, or if a refund is forthcoming, please adjust our deposit account 06-1050 referencing attorney docket "12258-036001."

Respectfully submitted,

Date: June 22, 2003



Faustino A. Lichauco
Reg. No. 41,942

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906